

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SEVEN**

HEALTH ALLIANCE PLAN¹

Employer

and

Case 07-RC-141682

**INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO²**

Petitioner

APPEARANCES:

Timothy J. Ryan, Attorney, of Grand Rapids, Michigan, for the Employer.
Ava Barbour, Attorney, of Detroit, Michigan, for the Petitioner.

DECISION AND DIRECTION OF ELECTION

The Employer designs, sells, and administers health insurance plans, and provides its services to individuals and groups.

Petitioner seeks to represent approximately 26 employees employed in the Employer's Client Services Division in the following bargaining unit: all full-time and regular part-time client relations liaisons (CRLs), personal services coordinators (PSCs), quality analysts (QAs), grievance analysts (GAs), Medicare/FEHB resolution analysts (MRAs), and group support services coordinators (GSSCs); but excluding all other employees, guards and supervisors as defined in the Act.³

The Employer maintains that the GSSCs lack a sufficient community of interest with the other petitioned-for employees, and therefore should be excluded from the unit. Otherwise, the Employer agrees to the petitioned-for unit.

¹ The Employer's name appears as amended at the hearing.

² The Petitioner's name appears as amended at the hearing

³ The proposed unit description appears as amended by Petitioner at the hearing.

As discussed below, based on the record and relevant Board law, I find that the GSSCs possess a sufficient community of interest with the other petitioned-for employees as to warrant their inclusion in the petitioned-for unit. Petitioner's proposed unit is appropriate.

I. Analysis

A. Board Law

It is well established that a certifiable unit need only be an appropriate unit, not the most appropriate unit. *International Bedding Company*, 356 NLRB No. 168, slip op. at 2 (2011), citing *Morand Bros. Beverage Co.*, 91 NLRB 409, 418 (1950), *enfd.* 190 F.2d 576 (7th Cir. 1951). See also *Boeing Co.*, 337 NLRB 152, 153 (2001) (“If [the petitioned-for] unit is appropriate, then the inquiry into the appropriate unit ends.”)

A primary consideration in determining an appropriate unit is whether there is a shared community of interest between the employees that would require their inclusion in the unit. *NLRB v. Action Automotive, Inc.*, 469 U.S. 490(1985). The Board looks to a variety of factors to determine whether a community of interest exists, including, *inter alia*, the nature of employee skills and functions, common supervision, the degree of functional integration of operations, the differences in the types of work and the skills of employees, the extent of centralization of management and supervision, the extent of interchange and contact between groups of employees, general working conditions and fringe benefits, and bargaining history. *International Bedding Company*, *supra*, slip op. at 2; *Boeing Co.*, *supra* at 153; *NLRB v. Paper Mfrs. Co.*, 786 F.2d 163, 167 (3rd Cir. 1984); *Rinker Materials Corp.* 294 NLRB 738, 738-739 (1989). The petitioner’s position regarding the scope of the unit is also a relevant consideration. *International Bedding Company*, *supra*, slip op. at 2, citing *Marks Oxygen Co.*, 147 NLRB 228, 230 (1964); *E.H. Koester Bakery & Co.*, 136 NLRB 1006, 1012 (1962). However, as noted by the Employer, that issue is not dispositive with regard to what constitutes an appropriate unit, and certain proposed units, such as those based on an arbitrary, heterogeneous, or artificial grouping of employees, will be found to be inappropriate. See, *Moore Business Forms, Inc.*, 204 NLRB 552, 553 (1973).

B. Application of Board Law to this Case

In reaching the conclusion that the overall similarity of skills and functions, contact and interchange between employees, functional integration of the operations, and similarity of working conditions and fringe benefits between the GSSCs and the other petitioned-for employees establishes a sufficient community of interest among them to warrant a finding that the GSSCs can appropriately be included in the proposed unit, I rely on the following analysis and record evidence.

(1) Layout of Facility and Common Supervision

The Employer employs a total of approximately 950 employees. All of the petitioned-for employees are employed at the Employer’s corporate headquarters in its Client Services Division, located at 2850 West Grand Boulevard in Detroit. While the record references another

facility located in Southfield, it is silent as to who is employed or what type of operations are performed there.

Out of the 26 employees in the petitioned-for unit, four are employed in the CRL classification, six in the PSC classification, four in the QA classification, five in the GA classification, four in the MRA classification, and three in the disputed GSSC classification. The three GSSCs are Jacqueline O'Connell, Jacqueline Green, and Eva Marie Jordan.

Richard Chaney, Vice President of Client Services, heads the Employer's Client Services Division. Chaney reports to Jim Connelly, President and Chief Executive Officer, as does Matt Walsh, Senior Vice President and Chief Operating Officer. Three Directors report to Chaney: Director of Customer Service Operations Monica Jackson-Lewis; Director of Call Center Operations Jerome Brown; and the Director of Customer Experience and Grievances, which position is currently vacant.⁴

Retention Manager Jor'Dawn Page-Bowers and Quality Supervisor Barbara Thorne report directly to Jackson-Lewis. The CRLs and PSCs report directly to Page-Bowers, and the QAs report directly to Thorne. Customer Experience Manager Tiffany Roland and Correspondence Supervisor LeRon Gaines report to the currently vacant Director of Customer Experience and Grievances position, as does the Grievance Manager, which position is also currently vacant. According to the Employer's organizational chart, the GAs and MRAs report directly to Correspondence Supervisor LaRon Gaines. Also reporting to Gaines is Government Manager Timika Green, and reporting to her is Lead Coordinator Nicole Brown.⁵ The GSSCs report directly to Lead Coordinator Nicole Brown.⁶

⁴ The parties stipulated, and I find, that Jim Connelly, Matt Walsh, and Richard Chaney are supervisors within the meaning of Section 2(11) of the Act as they possess and exercise one or more of the following indicia of supervisory authority: authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees; or authority to responsibly direct employees or to adjust their grievances, or to effectively recommend such action, utilizing independent judgment in exercising such authority. Although the record is silent as to the supervisory status of the Director positions (Director of Customer Service Operations, Director of Call Center Operations, and Customer Experience and Grievances) as the parties have stipulated to the supervisory status of the individuals reporting to the Directors, it is reasonably assumed that the Directors possess supervisory authority within the meaning of the Act on the same basis as their reportees, and I find that Monica Jackson-Lewis and Jerome Brown are supervisors within the meaning of Section 2(11) of the Act.

⁵ Green also manages two supervisors, Stephanie Graves and Jamarr Donald, who directly supervise 17 customer support specialists in the Government Call Center, all of whom are part of the office-clerical non-exempt bargaining unit discussed below in Bargaining History.

⁶ The parties stipulated, and I find, that Jor'Dawn Page-Bowers, Barbara Thorne, Tiffany Roland, Timika Green, Nicole Brown, Stephanie Graves, and Jamarr Donald are supervisors within the meaning of Section 2(11) of the Act as they possess and exercise one or more of the following indicia of supervisory authority: authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees; or authority to responsibly direct employees or to adjust their grievances, or to effectively recommend such action, utilizing independent judgment in exercising such authority. Although the record is silent as to the supervisory status of Correspondence Supervisor LeRon Gaines, because the parties have stipulated to the supervisory status of Timika Green who reports to Gaines, it is reasonably assumed that Gaines possesses supervisory authority within the meaning of the Act on the same basis as his reportee Green, and I find that LeRon Gaines is a supervisor within the meaning of Section 2(11) of the Act.

(2) Similarity of Skills and Functions

With the exception of the GAs, who have been working on the fourth floor of the West Grand Boulevard facility for about one year, all of the petitioned-for employees work in cubicles located in a large common space on the second floor of the Grand Boulevard facility. The employees are grouped together by teams, within their classifications. All of the petitioned-for employees have a computer, telephone and telephone headset at their work stations.

The CRLs respond telephonically to member inquiries regarding insurance coverage and claim issues. Their job description indicates that their primary objective is to promote and educate individual members, and assess their needs relevant to member growth and retention strategies.

The duties of the PSCs are very similar to the duties of the CRLs, except that the PSCs respond telephonically to new member inquiries. Members are considered new within the first two years of their coverage with the Employer. The PSCs provide concierge/welcome services to new members, and, like the CRLs, assess their needs relevant to member growth and retention. In this regard, one of their primary objectives, as stated in their job description, is to provide support to all departments in group retention efforts. The PSCs also occasionally assist the marketing/sales department at off-site events in promoting and providing education regarding the Employer's various individual products and plans.

The QAs are responsible for monitoring phone calls handled by the other petitioned-for employees. They determine the quality of the call and provide feedback to the employee who handled the call. They also document such feedback, and may provide instruction, or coaching, to the employee regarding call procedures. However, typically such instruction is provided by the employee's supervisor after consultation with the QA. The parties stipulated that the monitoring, coaching and other duties and responsibilities of the QAs are not supervisory within the meaning of the Act.

The GAs respond in writing to individual member's appeals and grievances concerning insurance coverage and/or claims disputes. The appeal process, set forth in the member's policy, requires that all appeals must be in writing. The grievance process is available to members when there is an issue of whether a service or benefit is covered by the member's policy. Like appeals, grievances are typically submitted by the member in writing, and the GA responds in writing. Occasionally, a member might call to lodge a grievance orally. This is usually a new member calling his or her CRL. The CRL will forward the call to the GA for a written response. In determining these coverage and claims issues, the GAs use their computers to access the Employer's coverage and claims systems, and the members' policy provisions. In responding to member appeals and grievances, the GAs have some discretion to make adjustments up to a certain amount to resolve the coverage or claim issue. The parties stipulated that the duties and responsibilities of the GAs, as stated above, are not supervisory within the meaning of the Act.

The MRAs perform the same appeal and grievance-responding duties as the Gas, but for individual members who are covered under the Employer's Medicare-related policies. Their job description notes that they handle grievances specific to the Medicare Advantage and Federal

Government member population, following the guidelines of the Center for Medicaid and Medicare Services and the Office of Personnel Management.

Like the other petitioned-for employees, the GSSCs perform customer-service duties within the Client Relations Division. However, GSSCs handle customer service coverage and claim issues for the Employer's group members, such as employers that provide the Employer's insurance to their employees. The GSSCs respond to telephone, email, and written inquiries from group representatives, such as company human resource officials and insurance brokers.⁷ As part of their customer service duties, GSSCs may also address issues for an individual member covered under a group policy. The GSSCs receive telephonic inquiries via an 800 line set up specifically for group-related calls.

The GSSCs also perform investigations and audits regarding group coverage and claim disputes. To perform these investigations and audits, the GSSCs access policy and claim information through the Employer's PEGA computer system, looking for red flags for each claim in question. In this regard, the record demonstrates that the GSSCs are particularly focused on member retention and addressing "client in jeopardy" cases, in which a group is experiencing significant plan problems and may be considering terminating the insurance contract with the Employer.

The GSSCs work in cubicles on the second floor of the Grand Boulevard facility and use computers, phones and headsets in performing their work duties, as the other petitioned-for employees do. However, they utilize laptops rather than desk top computers because they go into the field to perform off-site work. Off-site they assist the sales/marketing department in representing the Employer at insurance agencies, companies, or other organizations, regarding group benefit coverage. They also attend open enrollment fairs to educate the public regarding group insurance coverage. During the open enrollment period, from October through January, the GSSCs can be out of the office for up to 75% of their work time, otherwise they are out of the office on average for two of five days per week, or about 40% of their work time.

(3) Functional Integration, including Contact/Interchange Among Employees

All of the petitioned-for employees work as part of an integrated process with a common goal of providing customer services within the Employer's Client Services Division. The job descriptions for the CRLs, PSCs and GSSCs list the same primary focus on member retention, and contemplate that they work with other departments to improve processes in retention and member education. Much like the GSSCs but to a lesser extent, the PSCs occasionally assist the marketing/sales department at off-site events promoting and providing education regarding the Employer's various products and plans.

In resolving group benefits and claims issues, the GSSCs often contact the other petitioned-for employees regarding customer service for the individual members within the group. For example, during a GSSC audit of a group client that was having significant issues, the GSSCs recruited the PSCs to assist in customer-service contact with the individual members

⁷ Insurance brokers are third party insurance agencies that contract with the Employer to sell its group insurance policies.

of the group. The GSSCs may likewise contact the CLRs for customer service assistance concerning a Medicare-related group policy. In handling issues involving whether there is coverage for a service in a group contract, the GSSCs often advise the individual member in question regarding the Employer's grievance process, and solicit and receive a grievance from the member. The GSSC will then physically walk the grievance to the GA work area and sign it in, and regularly communicate with the GA during the grievance process, to ensure follow-up care for the individual member and employer group. Finally, while there is some evidence that QAs monitor GSSC phone calls and provide feedback to them, the record is unclear as whether that process remains in place.

The petitioned-for employees do not substitute for each other. Regarding transfers, one GSSC was formerly a PSC. Other than that transfer, the record does not indicate transfers of employees into the GSSC classification, or GSSCs into other classifications. Two of the GSSCs were formerly lead supervisors over non-exempt office-clerical bargaining unit employees.

(4) Similarity of Working Conditions and Fringe Benefits

The call center is open from 8:00 a.m. to 8:00 p.m. The CRLs, PSCs, QAs, GAs, and MRAs work eight-hour shifts within that time frame, Monday through Friday. The GSSCs work the same general hours, 8:00 a.m. to 4:30 p.m., Monday through Friday, with occasional work outside of regular business hours during the open enrollment period. The PSC job description notes that they are required to work a flexible schedule with periodic evening and weekend work. All petitioned-for employees are salaried. The PSCs are at pay grade 20 on the Employer's pay scale which ranges from \$37,000 to \$57,000 annually. The QAs and GAs are at pay scale 21 which ranges from \$40,000 to \$63,000 annually. The CLRs, MRAs, and GSSCs are at pay scale 22 which ranges from \$43,000 to \$67,000 annually.

The PSCs and QAs are required to possess either an associate degree or 60 hours of college credits, in addition to two years of customer-service experience. The GAs and MRAs are required to possess at least an associate degree, and two to four years of customer-service experience. The CLRs are required to possess a bachelors degree (or completion of such within one year of taking the position), and three years of customer-service experience. The GSSCs are required to possess either a bachelor's degree, or six years of related experience, and three to five years of customer-service experience. There is no formal certification or licensing requirement for any of the petitioned-for employees, nor are the petitioned-for employees required to attend any specialized training.

All of the petitioned-for employees enjoy the same benefits, including health, retirement, vacation, and disability benefits. All of the petitioned-for employees wear business-casual attire to work.

(5) Bargaining History

Petitioner currently represents a bargaining unit of all full-time and regular part-time office-clerical/non-exempt employees employed by the Employer at its Grand Boulevard facility. The record indicates that included in this bargaining unit are 17 customer support specialists

employed in the Government Call Center. The record is silent as to whether there are other employees employed in this bargaining unit.

C. The GSSCs Share Sufficient Community of Interest to Warrant Inclusion in the Petitioned-for Unit

Based on the community of interest between the GSSCs and the other petitioned-for employees, I conclude that the interests of the GSSCs are not so disparate from those of the other petitioned-for employees that they cannot be included in the unit. The Employer's reliance on *Deposit Telephone Company, Inc.*, 328 NLRB 1029 (1999)⁸ and *A. Russo & Sons, Inc.*, 329 NLRB 402 (1999), does not persuade me otherwise.

In *Deposit Telephone*, involving a utility industry employer, the petitioned-for customer service technicians differed significantly in their day-to-day duties from the customer service representatives that the employer therein sought to include. The technicians spent substantial portions of their time in the field, performing work that was technical in nature, in contrast to the customer service tasks performed by the petitioned-for employees herein.

In *A. Russo*, the main issue decided by the Board was whether a warehouse unit was appropriate in a combination wholesale and retail operation. In deciding that a traditional community of interest test should be applied, the Board found that the petitioned-for warehouse employees did not share a sufficient community of interest with the retail employees sought to be included by the employer because there was little, if any, contact between the two groups of employees which serviced completely different aspects of the employer's operation. Additionally, the employees differed in their day-to-day duties, work hours, and benefits. In the instant case, multiple factors support finding sufficient community of interest between the GSSCs and the other petitioned-for employees, including not only similar skills, functions, and working conditions, but also a notable degree of functional integration and employee contact, as well as similar fringe benefits.

II. Conclusions and Findings

Based on the foregoing discussion and on the entire record,⁹ I find and conclude as follows:

1. The hearing officer's rulings are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.

⁸ Incorrectly cited in the Employer's brief as 328 NLRB 129.

⁹ Both parties timely filed briefs, which were carefully considered.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time client relations liaisons, personal services coordinators, quality analysts, grievance analysts, Medicare/FEHB resolution analysts, and group support services coordinators; but excluding all other employees, guards and supervisors as defined in the Act.

Dated at Detroit, Michigan, this 9th day of January 2015.

/s/ Terry Morgan

Terry Morgan, Regional Director
National Labor Relations Board, Region 7
Patrick V. McNamara Federal Building
477 Michigan Avenue, Room 300
Detroit, Michigan 48226

DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by **International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO**. The date, time and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements, are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have quit or been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **January 15, 2015**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list.

Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by e-filing through the Agency's website, www.nlr.gov,¹⁰ by mail, or by facsimile transmission at **313-226-2090**. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of **two** copies of the list, unless the list is submitted by facsimile or e-filing, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. Posting of Election Notices

Section 103.20 of the Board's Rules and Regulations states:

a. Employers shall post copies of the Board's official Notice of Election on conspicuous places at least 3 full working days prior to 12:01 a.m. of the day of the election. In elections involving mail ballots, the election shall be deemed to have commenced the day the ballots are deposited by the Regional Office in the mail. In all cases, the notices shall remain posted until the end of the election.

b. The term "working day" shall mean an entire 24-hour period excluding Saturday, Sunday, and holidays.

c. A party shall be estopped from objecting to nonposting of notices if it is responsible for the nonposting. An employer shall be conclusively deemed to have received copies of the election notice for posting unless it notifies the Regional Office at least 5 days prior to the commencement of the election that it has not received copies of the election notice. [This section is interpreted as requiring an employer to notify the Regional Office at least 5 full working days prior to 12:01 a.m. of the day of the election that it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995).]

d. Failure to post the election notices as required herein shall be grounds for setting aside the election whenever proper and timely objections are filed under the provisions of Section 102.69(a).

¹⁰ To file the eligibility list electronically, go to the Agency's website at www.nlr.gov, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Regional Office**, and follow the detailed instructions.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001**. This request must be received by the Board in Washington by **January 22, 2015**. The request may be filed electronically through the Agency's website, **www.nlr.gov**,¹¹ but may **not** be filed by facsimile.

¹¹ To file a Request for Review electronically, go to the Agency's website at **www.nlr.gov**, select **File Case Documents**, enter the NLRB Case Number, select the option to file documents with the **Board/Office of the Executive Secretary** and follow the detailed instructions.